IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.35207 of 2004
and
CRL.M.P.NO.10993 of 2004

Smt.G.Bagyalakshmi ... Petitioner

Vs.

The State by
the Inspector of Police,
City Crime Branch,
Coimbatore City,
Coimbatore. ... Respondent

Criminal Original Petition under Section 482 of Cr.P.C. as stated therein.

For Petitioner : Mr.J.Rajendraprasad
For respondent : Mr.A.N.Thambidurai,
Govt. Advocate (Crl.side)

O R D E R

The above Criminal Original Petition is filed praying to call for the records relating to C.C.No.318 of 2003 from the file of the Court of Judicial Magistrate No.V, Coimbatore and quash the same in respect of the petitioner.

2. The case of the petitioner is that the respondent has filed a case against her and 24 others on the allegation that they have committed an offence punishable under Section 120B r/w 420 IPC and the same was taken on file in C.C.No.318 of 2003 by the Court of Judicial Magistrate No.V, Coimbatore; that the charge against the petitioner is that she entered into criminal conspiracy with the other accused to commit the offence of cheating and borrowed a sum of Rs.2,25,000/- from Nedungadi Bank, Mill Road, Coimbatore and did not repay the loan amount; that while borrowing the loan amount, she has given immovable property security worth Rs.10,00,000/-; that due to the bomb blast in Coimbatore, she sustained heavy loss in the business and hence she could not repay the loan amount; that the Bank Officials instead of initiating civil proceedings before the Civil Court to recover the loan amount has come forward to initiate criminal proceedings to the civil transaction; that there is absolutely no material available on record for the commission of offence under Sections 120B and 420 IPC; that to attract the offence of cheating, there must be allegations that the petitioner, at the time of borrowing loan, has fraudulently or dishonestly induced the bank to sanction the loan,

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which is totally absent in this case; that mere non payment of loan amount will not be an offence. On such averments, she would pray for the relief extracted supra.

3. Heard the learned counsel for the petitioner and the learned Government Advocate on the Criminal side contra and the materials placed on record have also been perused.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that it is a case registered by the respondent against the petitioner and 24 others for the alleged commission of offence punishable under Section 120B r/w 420 IPC on the allegation that the petitioner entered into criminal conspiracy to commit the offence of cheating with other accused and borrowed a sum of Rs.2,25,000/- from Nedungadi Bank, Mill Road, Coimbatore and did not repay the loan.

5. On the other hand, it comes to be seen from the facts pleaded by the petitioner that while borrowing the loan amount, she has given immovable property security worth Rs.10,00,000/- and that due to the bomb blast in Coimbatore, she sustained heavy loss in the business and hence she could not repay the loan amount and hence, this Court is of the view that the entire transaction is rather a civil transaction duly entered into by the parties i.e. the petitioner and the complainant bank and since the liability is contractual on certain terms and conditions reduced into writing, as to an extent, and since the matter being purely civil in nature, the civil court is the competent court to appreciate all the facts and circumstances involved in the whole affair allowing parties to let in evidence so as to arrive at a valid conclusion and hence the criminal proceeding initiated against the petitioner in C.C.No.318 of 2003 from the file of the Judicial Magistrate No.V, Coimbatore is rather an attempt to give a criminal colour to a matter which is purely civil in nature and therefore such tendency should be discredited and hence the criminal proceeding initiated against the petitioner is only liable to be quashed. However, since there is no dispute regarding the liability of the petitioner, in the interest of justice it is only desirable to give liberty to the complainant bank to initiate civil proceedings against the petitioner so as to recover the amount due to the complainant bank in accordance with law and in such event, the time exhausted by the complainant in prosecuting the above Criminal case shall be excluded from the period of limitation and hence the following order:

In result,

(i) subject to the above observation, the above Criminal Petition is allowed;

(ii) the case in C.C.No.318 of 2003 from the file of the Judicial Magistrate No.V, Coimbatore in respect of the petitioner is quashed;

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(iii)consequently, Crl.M.P.No.10993 of 2004 is closed.

Sd/
Asst.Registrar
Dt: 3.1.2005

Amended as per the order of this
Court dated 1.3.2006 and made in
Crl.M.P.NO.1324/06.

Sd/
Assistant Registrar
Dt: 17.3.2006

/true copy/

Sub Asst.Registrar

To

1.The Judicial Magistrate No.V,
Coimbatore

2.-do- Through the Chief Judicial
Magistrate, Coimbatore.

3.The Public prosecutor,
High Court, Madras

One cc to Mr.K.Kalyana Sundaram,
Advocate, Sr. 9943

To be substituted to the order already despatched on 7.1.2006

CRL.O.P.NO.35207 OF 2004

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